

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

U.S. BANK NATIONAL ASSOCIATION,
as Trustee for the Holders of
Bear Stearns Alt-A Trust 2006-3,
Mortgage Pass-Through Certificates,
Series 2006-3,

3:12-CV-00314-AC
ORDER

Plaintiff,

v.

ZANDY BUTLER, CHARITY M. BUTLER,
and ALL OCCUPANTS OF ADDRESS:
10387 SOUTHEAST CRESCENT RIDGE
DRIVE, PORTLAND, OR, 97266

Defendants.

JANAYA LEE CARTER
Round Crabtree Olsen, PS
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Bellevue, WA 98006
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Pro Se Defendant Occupant

BROWN, Judge.

Magistrate Judge John V. Acosta issued Findings and Recommendation (F&R) (#4) on February 24, 2012, in which he recommends the Court remand this matter to Clackamas County Circuit Court because the federal court lacks subject-matter jurisdiction under 28 U.S.C. § 1332(a). Defendant Miles Julison, one of the alleged occupants of the premises that are subject to foreclosure in this action,¹ filed timely Objections. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's

¹ The Court mailed Defendants Zandy Butler and Charity M. Butler copies of Defendant Julison's Objections, and the mail was returned as "undeliverable."

report. 28 U.S.C. § 636(b)(1). See also *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*).

I. Procedural Background.

Plaintiff U.S. Bank filed an Eviction Complaint in state court to evict Defendants and all occupants of the premises identified in the caption.

Defendant Julison, purporting to act with the consent and on behalf of all Defendants, filed a Notice of Removal of the Eviction Complaint. Defendant Julison alleges he is an occupant of the address identified in the Eviction Complaint and asserts all Defendants consent to the removal of this action from state court. Defendant Julison contends removal is appropriate pursuant to 28 U.S.C. § 1332(a) based on diversity of citizenship and because the amount in controversy exceeds \$75,000.

The Magistrate Judge addressed *sua sponte* whether the federal court had subject-matter jurisdiction and noted U.S. Bank identifies on the face of the Eviction Complaint that its address is in Bellevue, Washington, which, in fact, is the address of U.S. Bank's attorney of record in this case. In their Notice of Removal, Defendants state they are citizens of Kent, Washington. Accordingly, based solely on that information, the Magistrate Judge concluded there was not the requisite diversity of citizenship between the parties for purposes of establishing

federal jurisdiction under 28 U.S.C. § 1332(a)(1). F&R at 4.

In addition, the Magistrate Judge also found any monetary amount sought as damages, *if pleaded*, would be only "incidental to the unlawful detention of the named property" and would "not exceed \$75,000." (Emphasis added). F&R at 4-5.

II. Diversity Jurisdiction.

For purposes of diversity jurisdiction, a plaintiff's state of citizenship must be diverse from each defendant's state of citizenship, and the amount in controversy must exceed \$75,000. 28 U.S.C. § 1332(a)(1).

A. State of Citizenship.

The Magistrate Judge concluded U.S. Bank's state of citizenship and the state of citizenship of each Defendant was the same; *i.e.*, Washington State, thereby precluding subject-matter jurisdiction based on diversity of citizenship. As noted, however, the address on the Eviction Complaint is the address of Plaintiff's counsel in the State of Washington, which is not determinative of diversity jurisdiction.

Defendants assert and Plaintiff concurs that Plaintiff's headquarters are located in Minnesota rather than Washington. In *Wachovia Bank v. Schmidt* the Supreme Court held that, except for actions by the United States under 28 U.S.C. § 1348, "all national banking associations shall . . . be deemed citizens of the States in which they are respectively located." 546 U.S.

303, 307 (2006). A national bank, however, is not a citizen of a state for purposes of diversity jurisdiction solely because it maintains a branch office in that state:

Were we to hold, as the Court of Appeals did, that a national bank is additionally a citizen of every State in which it has established a branch, the access of a federally chartered bank to a federal forum would be drastically curtailed in comparison to the access afforded state banks and other state-incorporated entities. Congress, we are satisfied, created no such anomaly.

Id. at 307.

On this record the Court concludes the Magistrate Judge erred when he found Plaintiff and Defendants are citizens of Washington State solely because Plaintiff's attorney or a branch office of the bank is located in that state. The Magistrate Judge, therefore, also erred in concluding this Court lacks subject-matter jurisdiction based on lack of diversity of citizenship.

B. Amount in Controversy.

In support of their removal petition, Defendants contend the amount in controversy far exceeds \$75,000 and, therefore, is sufficient to meet the "amount in controversy" requirements necessary for diversity jurisdiction. Defendants argue the property to be foreclosed has a reasonable value of \$610,000 with a fair rental value of 1% of that value, which amounts to \$6,100

per month over a 13-month period. Accordingly, Defendants contend the amount at issue in this case is \$79,300 (\$6,100 x 13), which would exceed the jurisdictional prerequisite for diversity jurisdiction.

Moreover, according to Defendants, even if the rental value is discounted because of the decline in rental values in recent years, a rental value that is decreased by 50% to \$3,050 still has a value in excess of \$75,000 if it is calculated over a period of 25 months.

The Magistrate Judge rejected this argument on the ground that Plaintiff seeks repossession of the property in its Complaint rather than damages. Oregon statutes relating to forcible entry and detainer (FED) proceedings prescribe the procedure to be followed in the course of a foreclosure proceeding that might impact the rights of individuals occupying the premises pursuant to a *bona fide* tenancy. There is not, however, a provision for damages in Oregon's statutory FED scheme flowing from a foreclosure proceeding. Since Defendants, who live on the premises, seek removal on the basis that this Court has diversity jurisdiction over this matter, Defendants must now establish that it has suffered damages in the amount of at least \$75,000 in order to satisfy the requirements of diversity jurisdiction. The Magistrate Judge, however, found the amount in controversy now alleged by Defendants to support removal of this

action based on diversity jurisdiction was contrived for the sole purpose of meeting the diversity jurisdiction requirements. The Court agrees. Defendants do not cite any authority that would support Defendants' right to the type of damages it now claims it is entitled to in this case.

CONCLUSION

For these reasons, the Court **ADOPTS** Magistrate Judge Acosta's Findings and Recommendation (#4) to the extent that the Court lacks subject-matter jurisdiction under 28 U.S.C. § 1332(a)(1) because the amount in controversy does not exceed \$75,000.

Accordingly, this case is **REMANDED** to the Clackamas County Circuit Court for the State of Oregon.

IT IS SO ORDERED.

DATED this 23rd day of May, 2012.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge